

are sold or offered for sale to an ultimate purchaser in the United States, we will void the exemption for those engines/equipment.

(c) Except as specified in paragraph (d) of this section, label exempted engines/equipment (including shipping containers if the label on the engine/equipment will be obscured by the container) with a label showing that they are not certified for sale or use in the United States. This label may be permanent or removable. See §1068.45 for provisions related to the use of removable labels and applying labels to containers without labeling individual engines/equipment. The label must include your corporate name and trademark and one of the following statements (as applicable):

(1) "THIS ENGINE IS SOLELY FOR EXPORT AND IS THEREFORE EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS."

(2) "THIS EQUIPMENT IS SOLELY FOR EXPORT AND IS THEREFORE EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS."

(d) You must apply a permanent label as specified in this paragraph (d) for engines/equipment certified under paragraph (a) of this section. You may apply a permanent label as specified in this paragraph (d) instead of the label specified in paragraph (c) of this section for exempted engines/equipment. Add a permanent label meeting the requirements of the destination country and include in the bill of lading a statement that the engines/equipment must be exported to avoid violating EPA regulations. We may modify applicable labeling requirements to align with the labeling requirements that apply for the destination country.

(e) We may set other reasonable conditions to ensure that engines/equipment exempted under this section are not placed into service in the United States.

(f) Exemptions under this section expire once engines are no longer in the United States. Therefore exemptions under this section do not allow engines to be imported back into the United States.

§ 1068.235 What are the provisions for exempting engines/equipment used solely for competition?

(a) New engines/equipment you produce that are used solely for competition are generally excluded from emission standards. See the standard-setting parts for specific provisions where applicable.

(b) If you modify any engines/equipment after they have been placed into service in the United States so they will be used solely for competition, they are exempt without request. This exemption applies only to the prohibition in §1068.101(b)(1) and is valid only as long as the engine/equipment is used solely for competition. You may not use the provisions of this paragraph (b) to circumvent the requirements that apply to the sale of new competition engines under the standard-setting part.

(c) If you modify any engines/equipment under paragraph (b) of this section, you must destroy the original emission labels. If you loan, lease, sell, or give any of these engines/equipment to someone else, you must tell the new owner (or operator, if applicable) in writing that they may be used only for competition.

§ 1068.240 What are the provisions for exempting new replacement engines?

The prohibitions in §1068.101(a)(1) do not apply to a new engine if it is exempt under this section as a replacement engine. For purposes of this section, a replacement engine is a new engine that is used to replace an engine that has already been placed into service (whether the previous engine is replaced in whole or in part with a new engine).

(a) *General provisions.* You are eligible for the exemption for new replacement engines only if you are a certificate holder. Note that this exemption does not apply for locomotives (40 CFR 1033.601) and that unique provisions apply to marine compression-ignition engines (40 CFR 1042.615). Paragraphs (b), (c), and (d) of this section describe different approaches for exempting new replacement engines where the engines are specially built to correspond to an earlier model year that was subject to

§ 1068.240

40 CFR Ch. I (7–1–10 Edition)

less stringent standards than those that apply for current production (or is no longer covered by a certificate of conformity). Paragraph (e) of this section describes a simpler approach for exempting partially complete new replacement engines that are built under a certificate of conformity that is valid for producing engines for the current model year.

(b) *Previous-tier replacement engines with tracking.* You may produce any number of new replacement engines under this section if all the following conditions are true:

(1) You produce a new engine to replace an engine already placed into service in a piece of equipment.

(2) The engine being replaced was not originally subject to emission standards or was originally subject to less stringent emission standards than those that would otherwise apply to the new engine. The provisions of this paragraph (b) also apply for engines that were originally certified to the same standards that apply for the current model year if you no longer have a certificate of conformity to continue producing that engine configuration.

(3) You determine that you do not produce an engine certified to meet current requirements that has the appropriate physical or performance characteristics to repower the equipment. If the engine being replaced was made by a different company, you must make this determination also for engines produced by this other company. You must keep records to document your basis for making this determination.

(4) You or your agent takes possession of the old engine or confirms that the old engine has been destroyed.

(5) If the old engine was subject to emission standards, you must make the new replacement engine in a configuration identical in all material respects to the old engine and meet the requirements of § 1068.265. You may alternatively make the new replacement engine in a configuration identical in all material respects to another certified engine of the same or later model year as long as the engine is not certified with a family emission limit higher than that of the old engine.

(6) You add a permanent label, consistent with § 1068.45, with your corporate name and trademark and the following additional information:

(i) Add the following statement if the engine being replaced was not subject to any emission standards under this chapter:

THIS ENGINE DOES NOT COMPLY WITH U.S. EPA EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE AN ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earliest tier of standards began to apply to engines of that size and type] MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(ii) Add the following statement if the engine being replaced was subject to emission standards:

THIS ENGINE COMPLIES WITH U.S. EPA EMISSION REQUIREMENTS FOR [Identify the appropriate emission standards (by model year, tier, or emission levels) for the replaced engine] ENGINES UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A [Identify the appropriate emission standards for the replaced engine, by model year(s), tier(s), or emission levels] ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(7) Engines exempt under this paragraph (b) may not be introduced into commerce before you make the determination under paragraph (b)(3), except as specified in this paragraph (b)(7). We may waive this restriction for engines excluded under paragraph (c)(5) of this section that you ship to a distributor. Where we waive this restriction, you must take steps to ensure that the engine is installed consistent with the requirements of this paragraph (b). For example, at a minimum you must report to us annually whether engines we allowed you to ship to a distributor under this paragraph (b)(7) have been placed into service or remain in inventory. After an engine is placed into service, your report must describe how the engine was installed consistent

with the requirements of this paragraph (b). Send these reports to the Designated Compliance Officer by the deadlines we specify.

(c) *Previous-tier replacement engines without tracking.* You may produce a limited number of new replacement engines that are not from a currently certified engine family under the provisions of this paragraph (c). If you produce new engines under this paragraph (c) to replace engines subject to emission standards, the new replacement engine must be in a configuration identical in all material respects to the old engine and meet the requirements of § 1068.265. This would apply, for example, for engine configurations that were certified in an earlier model year but are no longer covered by a certificate of conformity. You must comply with the requirements of paragraph (b) of this section for any number of replacement engines you produce in excess of what we allow under this paragraph (c). Engines produced under this paragraph (c) may be redesignated as engines subject to paragraph (b) of this section, as long as you meet all the requirements and conditions of paragraph (b) of this section before the end of the calendar year in which the engine was produced. The following provisions apply to engines exempted under this paragraph (c):

(1) You may produce a limited number of replacement engines under this paragraph (c) representing 0.5 percent of your annual production volumes for each category and subcategory of engines identified in Table 1 to this section (1.0 percent through 2013). Calculate this number by multiplying your annual U.S.-directed production volume by 0.005 (or 0.01 through 2013) and rounding to the nearest whole number. Determine the appropriate production volume by identifying the highest total annual U.S.-directed production volume of engines from the previous three model years for all your certified engines from each category or subcategory identified in Table 1 to this section, as applicable. In unusual circumstances, you may ask us to base your production limits on U.S.-directed production volume for a model year more than three years prior. Include only those stationary engines from

your U.S.-directed production volume that are certified under one of the standard-setting parts identified in Table 1 to this section. Do not include any exempted engines you produce as part of your U.S.-directed production volume, even if those engines must meet emission standards as a condition of the exemption. Include U.S.-directed engines produced by any parent or subsidiary companies and those from any other companies you license to produce engines for you.

(2) Count every exempted new replacement engine from your total U.S.-directed production volume that you produce in a given calendar year under this paragraph (c), including partially complete engines, except for the following:

(i) Engines built to specifications for an earlier model year under paragraph (b) of this section.

(ii) Partially complete engines exempted under paragraph (e) of this section.

(3) Send the Designated Compliance Officer a report by February 15 of the year following any year in which you produced exempted replacement engines under this paragraph (c). In your report include the total number of replacement engines you produce under this paragraph (c) for each category or subcategory, as appropriate, and the corresponding total production volumes determined under paragraph (c)(1) of this section. If you send us a report under this paragraph (c)(3), you must also include the total number of replacement engines you produced under paragraphs (b), (d), and (e) of this section. You may include this information in production reports required under the standard-setting part.

(4) Add a permanent label as specified in paragraph (b)(6) of this section. For partially complete engines, you may alternatively add a permanent or removable label as specified in paragraph (d) of this section.

(5) You may not use the provisions of this paragraph (c) for any engines in the following engine categories or subcategories:

(i) Land-based nonroad compression-ignition engines we regulate under 40 CFR part 1039 with a per-cylinder displacement at or above 7.0 liters.

§ 1068.240

40 CFR Ch. I (7–1–10 Edition)

(ii) Marine compression-ignition engines we regulate under 40 CFR part 1042 with a per-cylinder displacement at or above 7.0 liters.

(iii) Locomotive engines we regulate under 40 CFR part 1033.

(d) *Partially complete engines.* The following requirements apply if you ship a partially complete replacement engine under paragraph (b) or (c) of this section:

(1) Provide instructions specifying how to complete the engine assembly such that the resulting engine conforms to the applicable certificate of conformity or the specifications of §1068.265. Where a partially complete engine can be built into multiple different configurations, you must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes. Your instructions must make clear how the final assembler can determine which configurations are appropriate for the engine they receive.

(2) You must label the engine as follows:

(i) If you have a reasonable basis to believe that the fully assembled engine will include the original emission control information label, you may add a removable label to the engine with your corporate name and trademark and the statement: “This replacement engine is exempt under 40 CFR 1068.240.” This would generally apply if all the engine models that are compatible with the replacement engine were covered by a certificate of conformity and they were labeled in a position on the engine or equipment that is not included as part of the partially complete engine being shipped for replacement purposes. Removable labels must meet the requirements specified in §1068.45.

(ii) If you do not qualify for using a removable label in paragraph (d)(1) of this section, you must add a permanent label in a readily visible location, though it may be obscured after installation in a piece of equipment. Include on the permanent label your corporate name and trademark, the engine’s part number (or other identifying information), and the statement: “This replacement engine is exempt under 40

CFR 1068.240.” If there is not enough space for this statement, you may alternatively add: “REPLACEMENT” or “SERVICE ENGINE”. For purposes of this paragraph (d)(2), engine part numbers permanently stamped or engraved on the engine are considered to be included on the label.

(e) *Partially complete current-tier replacement engines.* The provisions of paragraph (d) of this section apply for partially complete engines you produce from a current line of certified engines or vehicles. This applies for engine-based and equipment-based standards as follows:

(1) Where engine-based standards apply, you may introduce into U.S. commerce short blocks or other partially complete engines from a currently certified engine family as replacement components for in-use equipment powered by engines you originally produced. You must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes.

(2) Where equipment-based standards apply, you may introduce into U.S. commerce engines that are identical to engines covered by a current certificate of conformity by demonstrating compliance with currently applicable standards where the engines will be installed as replacement engines. These engines might be fully assembled, but we would consider them to be partially complete engines because they are not yet installed in the equipment.

(f) *Emission credits.* Replacement engines exempted under this section may not generate or use emission credits under the standard-setting part nor be part of any associated credit calculations.

(g) *Circumvention.* The provisions of this section may not be used to circumvent emission standards that apply to new engines under the standard-setting part.

(1) The provisions of this section are intended to allow for replacement of engines that fail prematurely if none of the following is true:

(i) The engine can reasonably be repaired or rebuilt.

(ii) A different used engine (including rebuilt engines) can be used, consistent

Environmental Protection Agency

§ 1068.245

with applicable regulations. Note that the regulations limit the use of used engines from certain categories, such as converting land-based engines for use in marine vessels.

(iii) A new certified engine is available with the appropriate physical and performance characteristics.

(2) Anyone installing or completing assembly of an exempted new replacement engine is deemed to be a manufacturer of a new engine with respect to the prohibitions of § 1068.101(a)(1).

This applies to all engines exempted under this section.

(3) The stockpiling restrictions specified in § 1068.103(f) do not apply for engines that will be introduced into U.S. commerce only as allowed by this section. The model year restrictions specified in § 1068.103(f) do not apply for engines produced under paragraphs (d) and (e) of this section if you can demonstrate that the engines will be used only as replacement engines.

TABLE 1 TO § 1068.240—ENGINE CATEGORIES AND SUBCATEGORIES FOR STREAMLINED COMPLIANCE PROVISIONS FOR NEW REPLACEMENT ENGINES

Engine category	Standard-setting part ¹	Engine subcategories
Highway CI	40 CFR part 86	disp. < 0.6 L/cyl 0.6 ≤ disp. < 1.2 L/cyl disp. ≥ 1.2 L/cyl
Nonroad CI, Stationary CI, and Marine CI ..	40 CFR part 1039, or 40 CFR part 1042 ...	disp. < 0.6 L/cyl 0.6 ≤ disp. < 1.2 L/cyl 1.2 ≤ disp. < 2.5 L/cyl 2.5 ≤ disp. < 7.0 L/cyl
Marine SI	40 CFR part 1045	outboard. personal watercraft.
Large SI, Stationary SI, and Marine SI (sterndrive/ inboard only).	40 CFR part 1048 or 40 CFR part 1045	all engines.
Recreational vehicles	40 CFR part 1051	off-highway motorcycle. all-terrain vehicle. snowmobile.
Small SI and Stationary SI	40 CFR part 1054	handheld. Class I. Class II.

¹ Include an engine as being subject to the identified standard-setting part if it will eventually be subject to emission standards under that part. For example, if you certify marine compression-ignition engines under part 94, count those as if they were already subject to part 1042.

[73 59344, Oct. 8, 2008, as amended at 75 FR 23062, Apr. 30, 2010]

§ 1068.245 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, we may permit you to introduce into U.S. commerce engines/equipment that do not comply with emission-related requirements for a limited time if all the following conditions apply:

(1) Unusual circumstances that are clearly outside your control prevent you from meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable

steps to minimize the extent of the nonconformity.

(3) No other allowances are available under the regulations in this chapter to avoid the impending violation, including the provisions of § 1068.250.

(4) Not having the exemption will jeopardize the solvency of your company.

(b) If your unusual circumstances are only related to compliance with the model-year provisions of § 1068.103(f), we may grant hardship under this section without a demonstration that the solvency of your company is in jeopardy as follows:

(1) You must demonstrate that the conditions specified in paragraphs (a)(1) through (3) of this section apply.